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ABSTRACT

Two case studies involving possible violations of the rights of Spanish speaking criminal suspects are presented. In cases where suspects do not understand English, the Miranda warnings regarding the right to remain silent must be delivered in their native language and in a way that is understandable to the suspects. In the two cases involving Spanish speaking murder suspects who confessed to the murders after receiving the warnings, it is doubtful whether they fully understood the implications of waiving their right to remain silent. An analysis of the recordings of the interrogations reveals that in each case the interrogator spoke a different dialect of Spanish than the suspect or had an insufficient command of Spanish for meaningful communication to have taken place. It is shown that the language used in the warnings was ambiguous to the suspects. Coming from a different culture, it may be difficult for suspects to understand the law's protection of their rights or the fact that they are under no compulsion to speak to the interrogator. Transcripts of the interrogations are appended. (RW)

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"You have the right to remain silent".

Two case studies in forensic linguistics involving Spanish-speaking suspects.

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ANY STATEMENT MADE BY AN ACCUSED WHILE HE IS IN CUSTODY IS PRESUMED TO BE INVOLUNTARY.

(1) You have the right to remain silent;
(2) Anything you say can and will be used against you in a Court of Law;
(3) You have the right to speak to an attorney and to ask that he be present while you are questioned;
(4) If you cannot afford an attorney, one will be appointed to represent you without charge before you are questioned, if you so desire.*

These admonitions are derived from concepts which form the core of our adversary system of criminal justice. The rights enumerated above summarize the principle that no governmental authority requires an accused to speak and provide evidence against himself, and that every accused person has the right to the assistance of an attorney to advise him of the possible consequences of the situation he finds himself in as the focus of a criminal investigation. This right is so inalienable that an attorney will be provided at the government's expense if the accused requests legal counsel and cannot afford to retain same. Miranda v. Arizona, 384 U.S. 436, 16 L.Ed.2d 694, 705 (1966): the basis of these rights was founded in the respect which our Constitution insists that government -- at whatever level -- must accord the dignity and integity of its citizens. The Constitution establishes a delicate balance between a citizen and his government which the government must respect even as it seeks to punish him. (Miranda, Supra, p. 715.) To insure that any statement made by an accused is a product of his own free will, and made with the knowledge that he has no obligation to provide evidence against himself, an accused must be advised of his rights to counsel and against self-incrimination in the fashion indicated in Miranda. If the Miranda admonitions are to be effective, they must be delivered in a way that is understandable to the accused. The law requires more than a mechanical advisement of rights. People v. Hildabrant, 244 CA2d 423 (1966); People v. Randall, 1 C.3d 948 (1970.) Unless an accused has been advised of these Miranda rights any statement made by him to police officers while he is in their custody is presumed to be a product of the compulsion implicit in a custodial interrogation and not a product of free choice. Miranda v. Arizona, supra, at 467, 719. If an accused makes a statement under circumstances which show it to be either actually or presumptively compelled, it is inadmissible in any fashion in any subsequent proceeding. People v. Disbrow, 16 Cal. 3d 101 (1976): People v. Rucker, 16 Cal.3d 368, 384-391 (1980).

*I wish to thank Mr. Raimundo Montes de Oca, Deputy Public Defender, for clarifying many legal points. His briefs about one case have been used liberally in this paper.

The generic masculine is used throughout this paper as it appears in the legal documentation studied; it should not be interpreted as implying chauvinism.

The Miranda rights have become almost a cliché -- not only for those of us who have some familiarity with our criminal procedures -- but even for the average citizen. Television programs, newspaper accounts, and informal conversations, have popularized a notion of the Miranda warnings. In the sixteen years since the Miranda decision, these admonitions have become a part of our national experience. At this late date it is almost impossible to remember just how revolutionary the principles of Miranda were thought to be or the impact they had on legal proceedings at the time. For most of us, Miranda is a well-worn concept. For some, however, especially those among us who come from countries with different legal systems and with different national experiences, the principles of Miranda are just as revolutionary today as they were when they were first announced. The Miranda court itself, in reciting the history of the Fifth Amendment (supra, p. 714-716), recognized the uniqueness of that constitutional provision, and also how different the legal procedures it came to require were from those found in other countries. (Miranda, supra, p. 725.) The Miranda warning -- in an effort to bring verisimilitude to otherwise improbable situations -- seems to be recited on the screen in English with the frequency of the national anthem before a baseball game. Yet public knowledge of the rights of non-English speaking minorities in a court of law is essentially non-existent.

I questioned a random sample of people about the content and meaning of the Miranda warning. Few could verbalize what it meant. The warning contains four parts:

(1) You have the right to remain silent.
(2) Anything you say can and will be used against you in a court of law.
(3) You have the right to talk to a lawyer and have him present with you while you are being questioned.
(4) If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning occurs, if you wish.

The actual language used to render the warning, however, may change. In Santa Barbara, CA., I am aware that three separate local law enforcement agencies issued three quite different versions of the warning. Obviously, reading (or reciting from memory) the words of the warning is not the only requirement. The four points of the admonition comprise the rights that the suspect must waive in order for the officer to engage in any form of questioning. So the warning, if it is to be interpreted in a court of law as a waiver of the suspect's rights, must also include the following questions:

(1) Do you understand each of these rights I have explained to you?

(2) Having these rights in mind, do you wish to talk to me now?

An affirmative response to both questions constitutes a waiver. It is important to bear in mind that if the interrogation takes place in parts, or is interrupted for any reason, the waiver must be secured again each time there is a break in questioning. Additionally, the suspect can stop responding to questions being directed to him at any time and can request legal representation (though it seems not to have been determined if the law definitely requires that he/she know that the questioning can be stopped at will).

You will undoubtedly have noticed that the whole warning centers around the accused's "understanding" the contents of the Miranda provision. Merely reading the warning does not constitute a waiver. "Understanding" is the key. And here we begin to tread rough waters. How does one measure understanding? A "yes" response is not a foolproof indicator that one has correctly and/or completely understood what has just been said. A "yes" to one question covering four points may actually mean not having understood one or more of them.

Although I have been working with this issue for quite awhile, it is still baffling to me how anyone who is arrested agrees to be questioned without having a lawyer present, especially when no binding offer of leniency can be made by the officer in exchange for agreeing to talk. In the case of non-English speakers belonging to a different culture the problem is two-fold. The whole concept that a suspect has rights may be out of reach of many people. The idea that the law protects the accused while at the same time it is prosecuting him/her, may be hard to reconcile for some non-Americans. The Miranda warnings were, after all, a pretty radical move for the protection of a suspect's rights. Just, to be sure, but nevertheless radical. It is no secret that the the law enforcement agencies have adversary feelings on this issue.

The requirement that the accused understand his rights before being questioned presents the second problem that I am sincerely concerned with -- the language used to deliver the warning. The law agency must possess translations in several languages and it must be able to conduct questioning in the primary language of its suspects. This is not as easy to accomplish as it might seem. We will deal here only with Spanish, which is by far the primary non-English language used in the U.S.

But let us get into specifics: The case, California High Sierras. A Basque shepherd in his eighties is found dead in his mountain cabin. Shot three times with a rifle. A considerable amount of money is missing. Suspicion immediately centers around other shepherds, particularly a Mexican national in his forties. Rifles of the type used in the killing are given regularly to the

herders to fend off wolves or mountain lions. Several pieces of circumstantial evidence link Mr. Perez (not his real name) with the murdered man. Local authorities fly in a Spanish-speaking narcotics agent from San Francisco, who attempts to get a confession. During two days of heavy questioning, Juan Perez denies everything. On the third day he says that he killed him. The taped confession is a clear and detailed admission of having committed the murder.

Now what we have here is a prosecutor's dream. An unequivocal confession. Perez says he went into the cabin, shot the old man, took the money and hid it. He even offers, in a futile attempt to get some clemency, to lead the police to where the money is stashed.

Of course there must be a Miranda warning somewhere. There is. The suspect was, in fact, "mirandized" just before the confession. Yet I think this is a classical case of the problems encountered in issuing the Miranda warning in a language other than English. First of all, in this instance, the two speakers are of very different language backgrounds: One is Cuban, the other Mexican. To a non-Spanish speaker this may seem unimportant, but only in a broad sense can one say that both men speak the same tongue. It would be as though an illiterate back-country speaker of English were to be questioned by a Sydney, Australia policeman.

But the crux of the matter here is not whether the suspect was read his rights: he was. The question is, did he waive his right to have a lawyer present while he was being questioned? Did he truly understand what the Miranda warning was all about?

From a purely language side, the officer says, "el juez te apuntará un abogado." Apuntar is clearly a borrowing from the English "appoint" but it has no meaning in this context in Spanish. (Apuntar means to aim as in a weapon. Nombrar is the word to be used in this context.) A point: apuntar would probably be understood by a bilingual English-Spanish speaker, but, although it may sound incredible, a monolingual would not understand the use of the word here, at least not to the degree that the law requires. However, Perez might have guessed at the meaning of the sentence.

But right after the warning the suspect says in Spanish, "In that matter of the lawyer, what kind of money do I have"? Patent proof, I believe, that the accused had not understood his right to free legal counsel.

The officer re-explains and Juan asks for the lawyer. Here the interrogation seems to halt, but the Cuban officer again convinces the suspect to talk to him.

Did the suspect waive his rights? The Public Defender's Office called me at the University and asked me to hear the several

tapes of the interrogation and confession. I was instructed to form an opinion on whether the accused had understood his rights and on whether there had been any language aspects that might have impeded communication.

I had to form an opinion of the suspect's language ability, so I visited him in jail. The problem at this point, for me, became no longer just a legal one. I was reasonably certain that Perez had not waived his rights. (I recently played the tape in Mexico City to a group of linguists who unanimously agreed with my assessment.) Yet I knew that he had killed with premeditation -- not in self defense, not in a barroom brawl, not in a fit of passion. He had planned and executed the killing of a friend to steal his money.

Rather than overdramatize the case in question, I wish to convey the importance of the Miranda warning and its implications in a case such as this. An iron-clad waiver, coupled with the confession and an array of convincing circumstantial evidence, would in all likelihood bring a charge of murder in the first degree, which in California carries the death penalty.

The case never got to trial. The Public Defender did, however, convince the prosecution and the judge that the confession would not be admissible. The man would have probably not been found guilty of murder in the first degree and would instead have gone free. That, it was explained to me, is not of as much concern to the system as imprisoning an innocent person. (N.B. Mr. Juan Perez pleaded guilty to murder in the second degree. He should be out of jail in a few more years.)

What is at issue here is the admissibility in a court of law of evidence that is not voluntarily or not intelligibly given. From a linguist's point of view there was little question that the accused had not understood the warning, and thus was unable to legally waive his rights. Yet it is important to note the unwillingess or recalcitrance of the system to bring the issue before the jury. In the case just outlined, plea-bargaining was in a sense avoiding airing the problem publicly.

In another very recent case, the basic problem of reading the Miranda warning was complicated by other factors. Gabriel Rivas (not his real name) was killed by a gunshot from a small caliber weapon on October 10, 1981 at about 10:30 p.m. Less than twenty-four hours later, Enrique Garza (ficticious name) was arrested for his murder. Garza was taken to to the police station and interrogated by detectives. The interview was conducted in Spanish and recorded on a cassette-recorder. During the interview, Garza made statements in which he admitted shooting Gabriel Rivas. I was retained by the Public Defender's Office as an expert witness to provide my opinion on the adequacy of the language used during the interrogation.

The tape of the interrogation did, indeed, contain statements by the defendant that were incriminatory: In essence, he confessed to the killing. Yet in our system of justice, the statements he made are presumed to be involuntary unless they were preceded by the Miranda warning and the waiver of his constitutional rights. Mr. Garza is a Mexican national who speaks no English. Although he claimed to have had a grammar school education, my interview with him, and an analysis of a narrative he wrote, led me to believe that he was marginally literate; a fairly typical undocumented worker from a rural area of Mexico where the basic skills taught in childhood are soon forgotten for there is little chance to practice them. The officer that interrogated Mr. Garza had less than an adequate command of the Spanish language. He could, to some extent, carry on a simple conversation, but it was marred by incomplete phrases and sentences, hesitations, and syntactic deadends. On the witness stand he admitted to having had no formal training in Spanish. His accent was rather heavy and his delivery bumpy and hesitant. He often needed to ask that the suspect repeat his statements and at one point he specifically said to his partner that he was "having a lot of problems with his dialect." The interrogating officer, however, was obviously communicating and understanding Spanish; the question is the degree of language accuracy required by the importance of the waiver.

MIRANDA WARNINGS AS WRITTEN ON
THE CARD GIVEN E. GARZA

1. Ud. tiene el derecho de quedarse callado.
2. Cualquier cosa que diga puede emplearse y se empleará en contra de Ud. en el juzgado.
3. Ud. tiene el derecho de hablar con un abogado y de pedirle que esté presente mientras lo interrogan a Ud.
4. Si Ud. no puede pagar a un abogado, se nombrará uno para representarlo antes de que lo interroguen, si lo desea Ud.

WAIVER

After the warning, and in order to secure a waiver, the following questions should be asked and an affirmative reply secured to each question:

1. Entiende Ud. cada uno de estos derechos que le he explicado?
2. Teniendo en cuenta estos derechos, quiere Ud. hablar con nosotros ahora?

When the text of the Miranda warning is presented in court, it is generally presumed that it was read accurately and completely. In this case, and I suspect in many similar ones, the waiver was far from convincing. Appendix I is a transcription of the taped conversation between the interrogating officer and the suspect.

Although fairly accurate, it does not, and cannot, reflect all the pauses, hesitations, stuttering, etc., contained in the tape. Since it was in Spanish, although part of an exhibit by the defense, it is per se useless unless the judge and jury possess a command of that language. Appendix II is a translation furnished by the Police Department to the court. It is a polished rendition that doctors most of the language used. It can be, however, taken as bona fide by one who is not familiar with the language nuances of the original Spanish text. In order to avoid that the translation provided by the police became the sole basis of contention about the propriety of the waiver, the Public Defender attempted yet another translation that somehow would reflect the tone and level of the original. This document is Appendix III. It also contains footnotes aimed at explaining the most pertinent language difficulties. What was given to the court, then, were three texts of the interrogation plus the tape recording itself. As an expert witness, I was charged with aiding the court with the linguistic aspects of the case and with reconciling the various texts. A reading of the Spanish transcription (not a translation) by anyone with a firm command of that language and with a modicum of linguistic training, would reveal that whether Garza had waived his right to remain silent is very much in question.

What follows is a written evaluation of the advisement as presented to the court. In retrospect one must consider that the explanation, though in English, rests on the assumption that it is not necessary to understand the Spanish original, and that somehow the spirit of the interrogation could be conveyed in another language.

ANALYSIS OF THE MIRANDA ADVISEMENT

"You have the right to remain silent."

Detective PRADO (not his real name) begins his interview of GARZA by asking asking him his name, etc. He then informs GARZA that he wants to talk about what happened last night. He tells GARZA that he wants to know if he wants to speak to him, and tells him to read a card (without explaining the purpose of the card or the reading). GARZA reads the card very haltingly, omitting completely the word Ud. and stumbling over the words "derecho" (right) and "quedarse" (to remain). PRADO intervenes, takes the card from him (this explains the "dámelo" of the text), and reads it to GARZA asking, "¿Qué dice esto?" GARZA does not understand what he has just read and been reading, because he says: "That I cannot talk, one cannot talk right now." PRADO again intervenes and adds: "If you do not want to," to which GARZA says "yes" then "okay".

Up to this point, GARZA has the notion that he cannot speak about the incidents of the night before. In attempting to clarify this matter, PRADO tells him: "Si no queres no necesitas hablar nada," telling GARZA that he does not have to talk unless he "needs to",

i.e., feels some inner urge to talk. GARZA responds by saying that he needs to talk. GARZA has not been told, nor does he seem to understand that no external authority compells him to speak about last night's happenings. However, GARZA feels an internal urge to speak about those events.

"Anything you say..."

Assuming GARZA wants to speak with the officers about the night's events, this next admonition is extremely important, since it advised him of the consequences of speaking about those events. Unfortunately, this admonition is given incompletely and in a fashion which makes it incomprehensible. At no time do either PRADO or GARZA make a statement indicating the full importance of this admonition -- that whatever is said can be used to the accused's detriment in court. Neither PRADO nor the defendant read the full sentences as written on the card. PRADO'S reading is incomplete and incomprehensible. Although he asks in bad Spanish if GARZA knows what "anything you say..." means and GARZA says "yes", the ensuing exchange patently shows that GARZA did not understand. GARZA reads "case" instead of "thing" ("caso" for "cosa") and ends by saying that "it says yes, one's case can be used in court; is that right?" He does not say that anything said can be used against him, but that the case can be used in court. Another indication of GARZA's semi-literacy and how it reflects on his understanding of the warnings on the card, is found in his reading of part 2 of the warning. GARZA stops at the end of the line, like in the first admonishment, where it does not make any sense to stop. Prodded by PRADO, he continues, stumbling over "empleara" (PRADO does too). There is little question about the second admonition, GARZA did not understand it. GARZA may have felt like speaking, but he was not told what the consequences of speaking were.

The third and fourth admonitions, having to do with the right to an attorney and an appointed attorney at no cost to the accused, will be considered together. The reading by PRADO is again faulty, as is GARZA'S: they both trip over "interroguen." The following exchange is made up of broken and run-on sentences. At one point PRADO says: "I am going to get one (a lawyer); GARZA responds with "okay", which is ambiguous and which can be interpreted as "yes, I want a lawyer," but then the conversation becomes confused and nothing comes of it. It is nevertheless clear that GARZA is not following all of the conversation because he says, "And how much can a lawyer charge?" PRADO responds in a very confused sentence: "For you, if you do not have money, you will not charge anything, because this man here, investigator and I want to talk to you about this case that happened last night." We may guess at what PRADO was attempting to say, but there is no indication that GARZA understood. And, certainly, the words used cannot give any indication that what was said conveyed what was intended.

After reading the Miranda admonitions, GARZA is asked to read the waiver section. He does so. He still shows difficulty reading the words, but it is pretty clear that he agrees to talk with the Police. The important question becomes, however, what this agreement means. The point can only be answered by looking to the admonitions given, how they were presented, and whether they were understood. The only possible conclusion is that although MR. GARZA agreed to speak with the officers, he was not fully informed of the consequences of speaking to them, and for that reason the waivers are ineffective.

My testimony was aimed at persuading the judge that the Miranda admonitions were improperly given and that, therefore, the tape of the interrogation should be suppressed as evidence. For three days the tape was listened to, the transcriptions and translations scrutinized, the meanings of words questioned, the unsaid guessed at, and so on.

The judge's decision, although disappointing, was not surprising. He denied the motion to suppress evidence on what I still consider to be very shaky grounds. The judge contended that there was an honest and convincing effort by the officer to convey the essence of the Miranda warning. Though he acknowledged that there were several mistakes, false starts, etc., he argued that the words were close, and that the missing words and notions should have been deduced by the accused because of the context in which they were given. It is this issue of the context that I should now like to address.

When any post facto discussion of the waiver takes place, one tends to ignor two things: first, that the point of reference is always the English version of the warning, which is the basis for comparison; second, that the suspect at the time of the admonitions might have had no idea of what the warning was all about. The whole notion of his "rights" to due process may have been totally alien and incomprehensible to him. It may be hard for a person of a different culture to reconcile the fact that the police are, while arresting him, also protecting him. This aspect, although it may seem speculative or even theoretical, cannot be shunned. When we reinterpret and attempt to reconstruct what occurred during the reading of the Miranda warning, the context is very different from the one we are trying to relive. We know what went on before and after; we know the issues in question. If we hear a poor rendering of the warning, we are tempted to view it as adequate because we know what the warning is all about, thus making the interpretation much easier, for us. It's like when a person has to fill in a blank and does not know what to complete it with, while another person looking on is appalled by this hesitancy because he knows what the answer is. We must force ourselves to get rid of our prejudices and think of the four points of the Miranda warning as if we had not heard them before, as indeed may be the case with many aliens.

In allowing the incriminating statements to be heard by the jury, the judge in fact ruled that much of the form and content of the Miranda warning and waiver can be left unsaid and can be presumed to have been deduced by the accused. I am not losing sight of the fact that the importance of the statements to be suppressed -- an admission to homicide -- may weigh heavily in a decision of this kind, especially since they occurred at the beginning of the proceedings at a time when no other evidence was produced. Even though the confession was not suppressed because of reasons alien to this discussion, Enrique Garza was found guilty of involuntary manslaughter and sentenced to two years in jail.

Perhaps the most surprising and revealing aspect of this case was the abyss that separated my evaluation of the waiver by Mr. Garza and the judge's. The magistrate, in his reasoning, argued that there had been an earnest attempt to convey the content of the warning, even though some words may have been left out and others mispronounced. The situation of being the focus of a criminal interrogation was a context sufficient for the suspect to have "understood" the consequences of his talking to the officers present. I believe that this point is the crux of the matter. The legal system does not require the same degree of exactness and stringency for the non-English speaker as it does for the native. This is not necessarily a built-in prejudice, but rather a laxness in the government that one can notice, for example, in numerous Spanish-language printed materials which, more often than not, contain gross mistakes that impede communication.

One can only guess at the number of times the Miranda warning is given improperly to non-English speaking accused. Yet the occasions on which it is challenged are few and unsuccessful. The prevailing attitude of the legal system is still one of overt resistance to the principle of, and of insinuations of punctiliousness about, the linguist as an expert witness.

APPENDIX I

CONVERSATION BETWEEN DETECTIVE PRADO AND ENRIQUE GARZA*

Spanish Tape

P: DETECTIVE PRADO

G: ENRIQUE GARZA

: Sit right there.

Sure.

(garbled background noise)

G: I'm scared;

P: Conoce este hombre aquí,

G: No.

P: Es Dective Sharpe. Y yo soy Dective Prado, es, la policía de aquí en Santa Bárbara.

G: Okay.

P: Y tu nombre es qué? Enrique qué.

G: Garza

P: Nomás?

G: Díaz.

P: Enrique Garza Díaz?

G: Sí.

P: No tienes un peiper con tu nombre?

G: No.

*Not their real names.

P: Puedes leer?

G: Sí.

P: Sí? Yo quiero platicar contigo en este caso que pasó anoche.

G: Okay.

P: Okay? Primero, necesito hablar contigo de tus, si queres hablar conmigo aquí ahorita.

G: Sí.

P: Okay?

G: Okay.

P: Quero que tu leer este carta aquí, y dime qué es el número uno allí. Qué dice el numero dos?

G: Dice el numero uno, dice, tiene el dire.. derecho de que..darse callado. Ahora el numero dos?

P: No. Nomás el numbero uno.

G. Okay.

P: Dámelo. Ahora me dice, usted tiene el derecho de quedarse callado. Qué, qué dice esto?

G: Que no puedo hablar, no se puede hablar ahorita.

P: Si no quieres.

G: Sí.

P: Si quieres hablar puedes hablar con, con nosotros, con los dos.

G: Okay.

P: Que estan aquí.

G: Okay.

P: Si queres. Si no queres no necesitas hablar nada.

G: Sí, sí necesito de hablar.

P: Muy bien. El dos, el numero dos.

G: El numero dos, dice: Cualquier caso que diga puede emplearse. Es el numero dos.

P: (qué, qué más?) (Pause) No, no. El, el numero dos aquí, cualquier cosa que diga puede emplezarse y si emm, lere encontrar de usted en el juzgado. Conoce qué dice esto?

G: Sí.

P: Dígame otra vez que dice allí en el, el numero dos.

G: Dice: cualquier caso que diga puede emplearse. Okay.

P: Y qué?

G: Y se emplea, emplee, empleará en contra de ut en el juzgado.

P: Y qué dice éste?

G: En español dice que si el caso de uno puede emplearse en el juzgado. Está bien?

P: Está bien. Está bien contigo?

G: Ya.

P: Okay. Usted tiene el derecho de hablar con un abogado y de pedirle que este prezente mientres la enteregan con usted.

G: Okay.

P: Dime que, que dice el, el tres allí.

G: Tres. Okay. Ut. tiene el derecho de hablar con un ahogado y de pidrele que esté presente mientras lo intere, intreru, interugan a usté, no. a Ud.

P: Conoce qué dice éste?

G: Si, ut, es quere decí a usted.

P: Si ud., si usted quieres un abogaro ahorita

G: Ajá.

P: Yo voy agararlo.

G: Okay.

P; Si no tenes dinero no es un problema porque yo voy a garrar el abogado por ti.

G: Okay.

P: Si queres. (pause) Y dime qué dice el cuatro allí?

G: El cuatro?

P: Ujim.

G: Si ud. le puede pagar a un agogado se nombrará uno para representarlo antes de que lo interu, interog, interugen si lo dice, dice..a ud.

P: Used.

G: Usted.

P: El mismo que estaba platicando contigo ahorita. Si queres un abogado, yo puedo agarrarte uno ahorita si queres porque éste es un muy, un caso muy serio.

G: Ya.

P: Y si quieres un abogado, ahorita yo voy, y voy agarrarlo uno.

G: Y cuánto puede cobrar un abogado?

P: Por tu, si no tienes dinero no va cobrar nada. Si no queres dinero no vas a cobrar nada, porque este yyy hombre aquí, investigadior y nomás yo quere platicar contigo en este caso que pasó anoche.

G: Ajá.

P: Pero si queres un abogado es, nomás dime. Dime qué dice aquí el número uno.

G: Dice así, y si entiende usted cada uno de estos derechos que le es... sisplicado.

P: Sí o no?

G: Sí.

P: El número dos.

G: Dice allí, is tinero, no, tiner, tiene, tiendo en cuenta estos dire... derechos quieres, quiere usted hablar con nosotros ahora?

P: O quieres un abogado?

G: Sí quiero hablar.

P: Quieres hablar ahorita?

G: Sí.

P: Y,...(pause) queres hablar con un abogado primero o queres hablar con, con nosotros horita?

G: Con ustedes...

P: Okay.

G: Ahorita.

P: Está bien. (pause) Está bien...éste es un caso muy serio.

G: Sí.

P: Y estos policías aquí piensan que tú stabas allí con un compañero, dos compañeros en la Jalisco.

G: Ajá.

APPENDIX II

CONVERSATION BETWEEN DETECTIVE PRADO AND Enrique Garza-Diaz

Translation by Police Department

P: Enrique, what, uh, do you know this man wno is here?

G: No.

P: Sharpe. I am Detective Prado, the Police from here in Santa Barbara. And you name is What? Enrique What?

G: Garza.

P: Is that all?

G: Diaz

P: Enrique Garza-Diaz? Do you have a card with your name on it?

G: No.

P: Can you read?

G: Yes, yes.

P: I want to talk with you about this case that happened last night.

G: Okay.

P: Okay. First, I need to talk with you of your...if, if, you want to talk with me here now.

G: Yes.

P: I want you to read this letter here, tell me what number one says. What does number one say?

G: Number one says, you have the right to remain silent. Now number two?

P: No, only number one.

G: Okay.

P: Let's see, the number says you have the right to remain silent. What, what does this say?

G: That I can't talk, or shouldn't talk right now.

P: If you want to...

G: Yes.

P: If you want to talk you can talk to us, with both of us that are here, if you want to. If you don't want to, you don't have to say anything.

G: Yes, yes, I need to talk.

G: Number two says, any case can be used, that's number two.

P: _____ no, the number two here. Anything you say can be summoned and you can find yourself in court. Do you understand what this says?

G: Yes.

P: Tell me again what it says there in number two.

G: It says, any case stated can be used and...

P: And what?

G: And can be used against you in the Court.

P: And what does this say?

G: In Spanish it says that yes, one's case can be used in the Court, is that right?

P: That's right, is that okay with you?

G: Yes.

P: You have the right to talk with an attorney and ask him to be present while you are being interrogated. Tell me what number three says there.

G: Three. You have the right to speak with an attorney and ask him to be present while you are interrogated.

P: Do you know what this means?

G: Yes, you, you, this means you.

P: If you want an attorney now, I'll go get one _____.

G: Okay.

P: If you don't have any money, that's no problem because I will get an attorney for you.

G: Okay.

P: If you want one. Tell me what the fourth one there says.

G: The fourth one?

P: Yes.

G: If you can't pay an attorney, one shall be named to represent you before you are interrogated, if you wish.

P: That's the same thing we were talking about right now. If you want an attorney I can get you one right now, if you want because this is a very serious case.

G: And how much would an attorney charge?

P: For you, if you have no money, will charge nothing. If you don't have any money you will be charged nothing because this man here, this investigator and myself only want to talk with you in this case that happened last night.

G: Hmm, hmm.

P: But if you want an attorney it's,...just tell me. Tell me what it says here, the number one.

G: It says, do you understand each one of the rights which I have explained to you?

P: Yes or no?

G: Yes.

P: The number two.

G: It says there, understanding these rights, do you want to talk with us now?

G: With you, now.

P: Very well.

G: Very well.

P: This is a very serious case.

G: Yes.

P: And...these policemen here think that you were there with one companion or two companions at the Jalisco...

APPENDIX III

CONVERSATION BETWEEN DETECTIVE PRADO AND ENRIQUE GARZA-DIAZ

Translation by the Defense

Sit right there.

Sure.

(noise)

G: I'm scared.

P: Do you know this man here?

G: No.

P: He is Dective Sharpe and I am Dective Prado,[1] he's, the police here in Santa Barbara.

G: Okay.

P: And your name is what? Enrique what?[2]

G: Garza.

P: Only?

G: Diaz.

P: Enrique[3] Garza / Diaz.

G: Yes.

P: You don't have a peiper[4] with your name?

G: No.

---

(1) The Spanish word for detective is "detective," the "word" used is a similar sound, but without meaning. Spanish grammar requires the use of the article "el" here, the tape shows no such article was used. Throughout this translation, whenever a mistake is made in the Spanish, an attempt will be made to reflect that mistake in the translation. It will, of course, be impossible to repeat the mistake exactly, but an attempt will be made to do so accurately and to keep the "flavor" of the mistake.

(2) This is not the correct usage, in Spanish one would ask, ?Cuál es su nombre? Furthermore, throughout the interview the words "tú" and "usted" are misused.

(3) The defendant's name was mispronounced and misunderstood.

(4) This is an anglicism, "peiper" is no Spanish word, "papel is the word for "paper," but the word which should be used is "documento," document, a paper with writing on it, which is what Prado wants.

P: Can you read?(5)

G: Yes.

P: Yes? I want to talk with you in this case that happened last night.

G: Okay.

P: Oka/? First, I need to talk with you about your..., if you wants(6) to talk with me here right now.

G: Yes.

P: Okay.

G: Okay.

P: I wants(7) you read this card(8) here, and tell me what is that number one thre. What does number one say?

G: Number one says, it says, you have the ri...right to re...main quiet.(9) Now number two?

P: No. Only the number one.

G: Okay.

P: Give me it. Now you tell me, you(10) have the right to remain quiet. What, what does that say?

G: That I cannot speak. One cannot speak right now.

P: If you don't want.

G: Yes.

---

(5) The Spanish should be "sabes leer," not "puedes leer."

(6) "Queres" is not the proper word form. The supposition is that the word which should have been used is "quieres," "do you want/wish."

(7) See 6, misuse of word.

(8) "Carta: means a written letter, a playing card, a written constitution or code, it does not mean a card in the sense of a small cardboard object with writing, the proper word is "tarjeta."

(9) The tape shows that Mr. Garza is trying to phonetically decipher the words written on the card. The words he had trouble with are "derecho," meaning "right," and "quedarse," meaning "remain."

(10) The referent for the pronoun "usted" is unclear, Mr. Prado consistently interchanges "tú" and "usted.

P: If you want to talk you can talk with, with us, with the two...

G: Okay.

P: Who are here.

G: Okay.

P: If you wants.[11] If you do not wants to you do not need to talk anything.

G: Yes, yes I need to talk.

P: Very well. Two, number two.

G: Number two says: Any case[12] that I might say can be used. That is number two.

P: What, what else. (pause) No, no. The, number two here.

P: Anything that you might say can [stumbles over word] be emplied and if em...pld(13) to be found from you in the court. Do you know what this says? (14)

G: Yes.

P: Tell me again what it says there on the, the number two.

G: It says: Any case[15] that may be said can be used. Okay?

P: And what?

---

(11) See note 6.

(12) The printed card uses the word "cosa," or "thing." The word is misread in the tape recording.

(13) The Spanish word is "emplearse," "to be used," the word actually used is a similar sounding "word" with no meaning. It is not a Spanish word. The phrase continues with a misuse (presumably) of the phrase "y se empleara en contra," and will be used against," but it is meaningless as read.

(14) The word "conocer" means to know, in the sense of being able to recognize a person or a face. It does not mean to understand. The proper word is "entender." The correct use of the word "conocer" is found on the first page. "Do you know this man?"

(15) Again, the word is misread. The printed card reads "cosa," but instead "caso" is read out.

G: And it empl...emplie...will be used(16) against ut(17) in the court.

P: And what does this say.

G: In Spanish it says that if one's case(18) can be used in the court. Is that right?

P: That's right. Is that right with you?

G: Yes.

P: Okay. You have the right to talk with a lawyer and to ask that he be prezent while(19) they hand you over with you.(20)

G: Okay.

P: Tell me what, what does the say..., the three there.

---

(16) The word "empleara" is read phonetically, it is not recognized as the future tense of the word "emplear."

(17) "En contra de ut en el." The phrase is incorrectly read; moreover, the abbreviation "ud." is not clearly recognized as a form of the word "usted," or "you."

(18) Again, for a third time "caso" is misread for "cosa."

(19) The word "presente," or present, is mispronounced as "prezente." Furthermore, depending upon accentuation, the word "este" can mean "this one," or "to be" or "to remain." The accent on the tape indicates the word may have been mispronounced.

(20) The Spanish is "lo interrogan a ud." "They interrogate you," the phrase actually read changes the word "interrogan" (interrogate) to "enteregan" the closest sounding word is "entregan" or "hand over," "enteregan" is not a Spanish word, and is meaningless.

G: Three. Okay. Ut[21] have the right to talk with a lawyer[22] and to requiste[23] that he be present while they intere...interu... interrugate you,[24] Rau.

P: Do you know what this says?[25]

G: Yes, ut. Means usted.[26]

P: Yes, "ud," if you want a l[illegible]ryer[27] right now.

G: Aja.

P: I go to get him.

G: Okay.

P: With you.

G: Okay.

P: If you don't haves[28] money it is not a problem because I go to grab[29] the lawyer for you.

G: Okay.

---

(21) "Ud" is an abbreviation for "usted," "you," again, the word is not immediately recognized.

(22) The word for lawyer is "abogado" the word used is "ahogado," or a "drowned man." Giving the benefit of the doubt, it is translated as lawyer.

(23) The word on the printed card is "pedirle," "to request of him," it is read so that it is not a recognizable word, "pidrele."

(24) The phrase "Lo interrogan a ud" is read in an unintelligible fashion, the Spanish phrase is meaningless.

(25) Again, a misuse of the word "conocer."

(26) Apparently the officer is asking if Mr. Garza understands what the phrase just read means. Mr. Garza understands that he is being asked if he knows what the word "ud" means, and he answers accordingly This leads one to wonder.

(27) The word "abogado" is intended, antoher "word" is used with no Spanish meaning "abogaro."

(28) The Spanish word is "tienes," "you have," the word used is "tenes" which presumably is meant to mean "tienes," it, however, has no meaning.

(29) The verb "agarrar" means to "grab" or "grasp," the word to use would have been "obtiener" (obtain) or "consequir" (get).

P: If you wants,[30] and tell me... What does four say there?

G: Four?

P: Ujum.

G: If you can pay him a laryer[31] will be appointed one to represent you before they interru, terrog, interrugrate(32) if you say, say... for you.

P: You.

G: You.

P: The same one that I was talking about with you right now. If you wants(33) a lawyer, I can grab(34) one right now if you wants(35) because this is very, very serious case.

G: Ya.

P: And if you want a lawyer, right now I go, and I go grab me him.[36]

G: And how much can a lawyer charge?

---

(30) The Spanish word is "quieres," "you want," the word used is "queres," which has no meaning..

(31) The word, presumably, meant is "abogado," the word used is "agogodo," again, a word with no meaning. It is misread from the card.

(32) The word on the printed card is "interrogan," the word is misread from the card and unintelligible.

(33) The word "quieres" is probably meant, "queres" is used and has no Spanish meaning.

(34) See note 29.

(35) See note 33.

(36) Presumably, the speaker meant to say "...y voy a agarrarle uno (a ud.)," instead the words used are confusing and can best be translated as indicated.

P: For you,(37) if you do not have money he is not going to charge nothing. If you do not wants(38)money you will not charge(39) nothing, because this...this man here, investigadior (40) and I just wants (41) to talk with you in this case that happened last night.

G: Aja.

P: But if you wants(42) a lawyer, just tell me. Tell me what it says here on number one.

G: It says this, and if you understand each one of these rights that I have explixated.(43)

P: Yes or no?

G: Yes.

---

(37) The word "tu" is used; it is a form of the pronoun which means "you." however, the proper form to use here is "para ti" or "para usted." the word "por" is also incorrectly used.

(38) See note 33. The word which should have been used is "Tienes" (have) instead of "quieres" (want).

(39) The word "vas" means "you will," the word which should have been used is "va" "he will."

(40) The word for investigator is "investigador," not "investigadior."

(41) See note 33. The word "nomas" used here, carries a connotation of a trivial or insignificant matter. "I only want to talk."

(42) See note 33.

(43) The printed card contains the words "he explicado," "have explained," when the card was read, the word "explicado" was misread.

P: Number two.

G: It says, is tinero, no, tiner, tiene[44] habing in mine[45] these... rights do you want to talk with us now?

P: Or do you want a lawyer?

G: Yes I want to talk.

P: Do you want to talk now.

G: Yes.

P: And...do you wants[46] to talk with a lawyer first or do you wants[47] to talk with, with us now.

G: With you.

P: Okay.

G: Right now.

P: That's good. That's good...this is a very serious case.

G: Yes.

P: And these policemen here think that you were there with a friend, two friends at the Jalisco.

G. Aja.

---

(44) The printed card contains the words "teniendo en cuenta," an idiomatic phrase meaning "having regard for," or "having in mind," or "remembering." The word "teniendo" is misread. The word used has no meaning.

(45) The whole idiomatic phrase is misused, and meaningless.

(46) See note 33.

(47) See note 33.